

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EVAN SARGENT,

Plaintiff,

v.

CITY OF SEATTLE, a Washington municipal  
corporation; and DONALD WATERS in his  
official capacity and individually, including his  
marital community with JANE DOE WATERS,

Defendants.

No.

**COMPLAINT FOR DAMAGES**

JURY DEMAND

**INTRODUCTION**

Plaintiff Evan Sargent, through his counsel of record, Patrick Preston, Thomas Brennan, and McKay Chadwell, PLLC, brings this civil rights and Washington common law tort action against the defendant City of Seattle and individual defendant Seattle Police Department (SPD) officer Donald Waters for damages arising from Sargent's unlawful arrest, malicious property damage and assault with a firearm by Officer Waters on July 28, 2009.

**I. PARTIES, JURISDICTION AND VENUE**

1.1 Plaintiff Evan Sargent is an adult man who currently, and at all times material to this action, resides and has resided in King County, Washington.

1.2 Defendant City of Seattle is a Washington municipal corporation doing business

COMPLAINT FOR DAMAGES - 1

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**ORIGINAL**

1 in Seattle, Washington, organized under the laws of the State of Washington, and acting under  
2 color of state law. SPD is an agency of the City of Seattle, duly authorized to provide law  
3 enforcement services to the citizens of the City of Seattle, and at all material times employed the  
4 individual defendant Donald Waters as a police officer.

5 1.3 Defendant Donald Waters at all times material to this action, acted under color of  
6 state law and pursuant to his authority as a SPD officer. He is sued in his official and individual  
7 capacities.  
8

9 1.4 Defendant Jane Doe Waters is designated as the corresponding legal spouse of  
10 defendant Donald Waters, who is sued in his individual capacity and including his marital  
11 community.  
12

13 1.5 The Court has jurisdiction over Sargent's federal civil rights claim under 42  
14 U.S.C. § 1983 and 28 U.S.C. § 1343 and Washington common law tort claims under 28 U.S.C. §  
15 1367(a).

16 1.6 Sargent served defendant City of Seattle on August 13, 2010 with a claim for  
17 damages pursuant to RCW 4.96.020 and SMC 5.24.005. More than 60 days has elapsed since  
18 presentation and the City of Seattle did not pay the claim.  
19

20 1.7 Venue is predicated on the fact that the acts complained of occurred in King  
21 County, Washington, and venue is proper pursuant to 28 U.S.C. § 1391(b). Some or all of the  
22 defendants reside in King County.  
23

## 24 **II. BACKGROUND FACTS**

25 2.1 On July 28, 2009, at approximately 5:00 p.m., Evan Sargent drove a truck into the  
26 alley running parallel to, and east of, the 4500 block of California Avenue Southwest in a  
27 commercial district of West Seattle. He temporarily parked the truck in the alley next to the  
28

1 entrance of his mother's business, Hands on Health, turned on the truck's hazard lights and  
2 entered to pick up a load of her business laundry. Vehicles frequently park temporarily in this  
3 alley in order to service the many commercial businesses on the block.

4 2.2 Donald Waters, an SPD officer not on duty, was driving his personal vehicle, an  
5 SUV, in the area and entered the alley to bypass rush hour traffic at nearby intersections. Waters  
6 was wearing street clothes. When he reached Sargent's truck, he saw that it was unoccupied and  
7 parked with the hazard lights flashing.  
8

9 2.3 Rather than waiting until the driver returned to move the truck, putting his own  
10 vehicle in reverse to exit the alley in the direction that he had come from, or attempting to drive  
11 around the truck, Waters instead parked in the alley and left his vehicle unattended to search for  
12 and confront the driver of the truck. Waters became upset after speaking to employees of other  
13 commercial businesses who did not know the identity or whereabouts of the driver of the truck.  
14

15 2.4 Moments later, Sargent returned from his mother's business with a load of  
16 laundry, which he placed in the back of the truck. Waters approached Sargent and berated him  
17 for parking in the alley, despite having done so himself. Waters did not identify himself as a  
18 police officer, and Sargent had no reason to believe that Waters was a police officer. Sargent  
19 agreed to move the truck without responding in kind to Waters' agitated and confrontational  
20 demeanor. Waters continued to yell at Sargent as Sargent attempted to reverse the truck away  
21 from Waters. Waters, unwilling to end the confrontation, pounded on the hood of Sargent's  
22 truck and punched off the side view mirror on the passenger's side, frightening Sargent and  
23 causing him to stall the engine.  
24

25 2.5 Waters rounded the front of the truck toward the driver's side door. Sargent  
26 fumbled with the door latch and fell to the ground. With Waters nearly standing over him in a fit  
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1 of rage, Sargent retrieved a Little League baseball bat from the truck and scrambled to his feet.  
2 Waters repeatedly tried to grab the bat as Sargent held it back in a defensive posture. Sargent  
3 made no attempt to strike Waters, instead protecting himself from the attack with a check-swing.

4 2.6 After Sargent screamed for a bystander to call 911, Waters went to his SUV and  
5 drew a handgun. He aimed it at Sargent, who dropped the bat and put his hands up, fearing that  
6 he would be shot. Waters then claimed that he was a police officer. Sargent responded in  
7 disbelief, "you're not a cop," but made no further attempt to defend himself. Sargent had no idea  
8 during the assault that Waters, in plain clothes, was an off-duty police officer.  
9

10 2.7 Waters called 911 on his cell phone. His immediate concern was to conceal his  
11 acts of violence. He told the 911 operator that he was an officer and that other witnesses would  
12 be calling. His concerns were accurate, as a prior 911 caller reported a man in the alley with a  
13 gun.  
14

15 2.8 Waters downplayed the incident to the 911 operator, making no reference to the  
16 property damage he had caused, his use of a firearm to threaten Sargent's life, or expressing any  
17 threat posed by Sargent. Although Sargent remained within walking distance of his truck, and  
18 the two were alone in the alley, Waters repeatedly denied safety concerns to the 911 operator.  
19 Waters stated that "everything is under control." He exhibited a complete lack of urgency, asking  
20 that responding patrol vehicles not use "lights and sirens." He instead directed the operator to  
21 "tell them it's fine."  
22

23 2.9 Within minutes, Waters' fellow officers, including Officer Willie Askew, Jr.,  
24 Officer Gregory Traver, Officer Michael Torres and Sergeant Joseph Maccarrone, arrived at the  
25 alley where they could see the obvious damage to Sargent's truck. Waters reported an  
26 "aggravated assault on an officer" with a weapon, which effectively covered up his seizure and  
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1 detention of Sargent, and the property damage Waters had caused. Sargent, who had never been  
2 arrested and had no criminal history, was handcuffed and transported by Officer Traver to the  
3 local SPD precinct station. Sergeant Maccarrone photographed the incident scene, but not the  
4 specific damage to Sargent's truck. No officer took into evidence the broken side view mirror,  
5 which lay on the ground next to the truck.  
6

7 2.10 SPD patrol officers in the alley, including the primary investigating officer, Willie  
8 Askew, Jr., did not investigate or arrest Waters for intentionally damaging Sargent's vehicle or  
9 for threatening Sargent's life with a firearm, or even cite Waters for blocking the alley with his  
10 personal vehicle.

11 2.11 Instead, Officer Askew proceeded with Sargent's formal arrest despite a lack of  
12 probable cause to believe that Sargent had committed any crime. Sargent was handcuffed and  
13 placed in a patrol car. Sgt. Maccarrone supervised Sargent's arrest in the alley.  
14

15 2.12 Officer Torres confiscated Sargent's Little League baseball bat, which he took to  
16 SPD's Southwest Precinct station. SPD never returned the bat to Sargent, despite the subsequent  
17 refusal of two prosecuting authorities to charge Sargent with any crime.  
18

19 2.13 Sgt. Maccarrone later drove to the Southwest Precinct station, where he obtained  
20 further supervisory approval of Sargent's unlawful arrest from Lieutenant Guynn, the Southwest  
21 Precinct Watch Commander. Lieutenant Guynn, without objection, approved and authorized  
22 Sargent's arrest and continued incarceration.  
23

24 2.14 SPD Policy and Procedure (DP&P) Manual Section 6.010 – Arrest Procedures,  
25 Subsection II. C., required that:

26 C. In cases where a person is arrested or detained for  
27 assaulting an on-duty or off-duty officer:

28 1. A sworn supervisor of the rank of lieutenant or

above shall be notified, and

2. The suspect shall not be released until the incident is reviewed by the aforementioned supervisor.

Policy 6.010 contained no exception to the required detention of a suspect pending supervisory review, regardless of whether a supervisor was available to respond to the arrest location, the length of the detention of the suspect, whether the initial seizure was supported by probable cause, or whether evidence existed that contradicted the allegations of the allegedly assaulted officer. Instead, Policy 6.010 mandated that the suspect "shall not be released."

2.15 In compliance with SPD DP&P Section 6.010, Sgt. Maccarrone and Officers Torres, Traver and Waters ensured that Sargent was not released until Lieutenant Guynn later approved the unlawful arrest at the Southwest Precinct station. Sargent remained in SPD's custody until he was transported to the King County jail in downtown Seattle. His initial appearance for "investigation of assault" took place at the jail courtroom the next day. After the hearing and posting \$1,000.00 bail, he was released. He never was charged with a criminal offense.

2.16 On July 29, 2009, SPD assigned Detective Nathan Janes to review the arrest report of Officer Askew. Janes referred SPD's investigation to the King County Prosecuting Attorney's Office (KCPAO) to request on July 30, 2009 that Sargent be "rush" charged with a felony assault on Waters with a deadly weapon. After the KCPAO declined to charge Sargent and sought more information from Janes regarding exculpatory witnesses identified by Sargent's defense counsel, Janes never again referred the investigation for charging consideration by the KCPAO.

2.17 Waters' fabrications about the incident in SPD's investigation report and documentation were contradicted by witnesses identified in the days following the incident by a

1 private investigator and former King County Sheriff's Office detective hired by Sargent's  
2 defense counsel. SPD failed to identify or interview these readily available witnesses at the  
3 incident scene on July 28, 2009, including a 911 caller. Sargent provided this information to  
4 Detective Janes.

5 2.18 During an August 18, 2009 interview of one exculpatory witness identified by  
6 Sargent's counsel, Detective Janes received confirmation that Waters had misrepresented  
7 Sargent's lawful actions in self-defense. The SPD witness interview transcript included the  
8 following exchange:  
9

10 JANES: So I just want to make sure I got this right. 'Cause I have the black guy  
11 [Officer Waters] telling me that this young kid [Sargent] actually swung  
12 the bat at him. Tried to hit him in the head and that's why he had to get  
13 his gun. Is that true or not?

14 [REDACTED WITNESS NAME]: Far away, like like.

15 JANES: Far away so he never had a chance to hit him in the head?

16 [REDACTED WITNESS NAME]: Not, not at all.

17 2.19 In order to fabricate his story in SPD investigative materials, Waters submitted  
18 multiple, conflicting accounts of the incident. One report he belatedly submitted 27 hours after  
19 the fact. For example, Waters' report to Askew of accidentally breaking the side view mirror as  
20 he "jumped backwards" later became part of an intentional act while pounding "on the hood of  
21 the truck." Waters' report to Askew that he had been standing on the "passenger side of the  
22 vehicle" when Sargent began to back up later changed to him being "practically next to this  
23 driver's side window." Physical evidence from the broken side view mirror, however, also  
24 showed that Waters had been positioned on the passenger's side when Sargent briefly moved the  
25 truck in reverse – back and to the right – before stalling it. Under these circumstances, it would  
26 have been impossible for Sargent to have "nearly pinned" Waters, as he claimed in his delayed  
27  
28



1 statement, because the truck was moving away from Waters at that point. Waters also claimed in  
2 the same statement, that prior to breaking the side view mirror, he intended to "inform" Sargent  
3 of a "vehicle violation," after parking his personal vehicle in the alley as well.

4 2.20 Despite receiving exculpatory witness statements and corroborating photographs  
5 and physical evidence from Sargent's counsel, knowing the inconsistencies in Waters'  
6 statements in SPD's report, and the lack of probable cause, Detective Janes met with other  
7 ranking SPD officers to develop a plan to attempt to have Sargent charged with misdemeanor  
8 offenses by the Seattle City Attorney. Janes refused to investigate Waters for any criminal  
9 offense. Janes also did not ask a neutral law enforcement agency for a criminal investigation of  
10 Waters.  
11

12  
13 2.21 On January 20, 2010, Janes received notice that the Seattle City Attorney also  
14 declined to charge Sargent with any offense.

15 2.22 Prior to SPD's referral of its investigation to the Seattle City Attorney for a  
16 second charging review, SPD initiated an investigation of Sargent's complaint of criminal acts  
17 by Waters that had violated his civil rights. By then, SPD possessed credible evidence that  
18 Sargent suffered civil rights violations from Waters' actions on the incident date, which included  
19 his arrest and detention without probable cause and the use of excessive force by Officer Waters.  
20 SPD nevertheless ratified these civil rights violations by concluding the misconduct investigation  
21 of Officer Waters through SPD's Office of Professional Accountability (OPA) with a "not  
22 sustained" finding, which did not find misconduct or impose any disciplinary measures.  
23

24  
25 2.23 Over Sargent's written objections to the "not sustained" finding, OPA refused to  
26 reopen its investigation, stating in an April 16, 2012 letter to Sargent that the investigation  
27 remained a "closed and certified OPA case."  
28



**III. CAUSES OF ACTION**

3.1 Sargent re-alleges and incorporates paragraphs 1.1 through 2.23.

3.2 The defendants' actions and omissions were done under color of the laws of the State of Washington and pursuant to and as a result of the policies, customs and practices of the City of Seattle.

3.3 At all relevant times, defendant Donald Waters acted within the scope of his employment with the City of Seattle.

**A. Unreasonable Seizure in Violation of the Fourth Amendment and 42 U.S.C. § 1983**

3.4 Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.3.

3.5 Defendant Waters unlawfully seized Sargent by pounding on the hood of Sargent's vehicle and intentionally breaking off a side view mirror, thereby effectively arresting Sargent without probable cause in violation of Sargent's right to be free from unreasonable seizures and under the Fourth Amendment and 42 U.S.C. § 1983. Waters' use of a firearm to threaten Sargent's life during the same incident was a continuation of this violation of Sargent's civil rights.

3.6 As a proximate result of this violation of Sargent's civil rights, Sargent suffered harm and damages in an amount to be determined at trial.

**B. Unreasonable Use of Force in Violation of the Fourth Amendment and 42 U.S.C. § 1983**

3.7 Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.6.

3.8 Defendant Waters used unreasonable force to seize, threaten and detain Sargent, including the unlawful use of a firearm, in violation of Sargent's right to be free from the use of unreasonable force against his person and under the Fourth Amendment and 42 U.S.C. § 1983.

1           3.9     As a proximate result of this violation of Sargent's civil rights, Sargent suffered  
2 harm and damages in an amount to be determined at trial.

3                           **C.     Unconstitutional Policies, Practices and/or Customs in**  
4                           **Violation of the Fourth Amendment and 42 U.S.C. § 1983**

5           3.10     Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.9.

6           3.11     Defendant City of Seattle, through SPD's policies, practices and/or customs,  
7 caused the violation of Sargent's right to be free from unreasonable seizure and unlawful  
8 detention under the Fourth Amendment and 42 U.S.C. § 1983.

9  
10          3.12     SPD officers arrested and detained Sargent under SPD Policy and Procedure  
11 Manual Section 6.010, even though probable cause did not support Sargent's seizure by Waters.  
12 The SPD policy manual mandated without exception that Sargent not be released "until the  
13 incident is reviewed by the aforementioned supervisor," which caused Sargent's continued  
14 illegal detention.

15  
16          3.13     Based upon the foregoing city policies, practices, customs, and omissions, the  
17 City of Seattle acted, and failed to act, in violation of Sargent's rights under the Fourth  
18 Amendment and 42 U.S.C. § 1983.

19          3.14     In addition, during the date of this incident and all subsequent acts, the City of  
20 Seattle had policies, practices, and/or customs that tolerated SPD's use of unnecessary or  
21 excessive force, including but not limited to using unnecessary or excessive force against  
22 individuals who are already under physical control.

23  
24          3.15     During the date of this incident and all subsequent acts, the City of Seattle had  
25 policies, practices, and/or customs that tolerated SPD officers unnecessarily escalating incidents  
26 resulting in the use of unnecessary or excessive force against individuals.

27  
28          3.16     During the date of this incident and all subsequent acts, the City of Seattle had

1 policies, practices, and/or customs whereby supervisors and/or command staff failed to  
 2 adequately oversee officers' use of force. The City of Seattle also failed to maintain adequate  
 3 training, policies, or practices to provide supervisors and command staff with direction on how to  
 4 supervise individual officers' use of force.

5 3.17 During the date of this incident and all subsequent acts, the City of Seattle ratified  
 6 defendant Waters' unreasonable use of force.  
 7

8 3.18 As a proximate result of the City's policies, practices, and/or customs, Sargent's  
 9 civil rights were violated and he suffered harm and damages in an amount to be determined at  
 10 trial.  
 11

12 **D. Ratification of SPD's Violation of the  
 13 Fourth Amendment and 42 U.S.C. § 1983**

14 3.19 Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.18.

15 3.20 Defendant City of Seattle, through OPA's investigation of the acts and omissions  
 16 of Officer Waters, and the information and materials provided by Sargent, received clear notice  
 17 of the violation of Sargent's civil rights under the Fourth Amendment and 42 U.S.C. § 1983.

18 3.21 The City of Seattle nevertheless ratified the violation of Sargent's civil rights  
 19 under the Fourth Amendment and 42 U.S.C. § 1983 through OPA's conclusion of its misconduct  
 20 investigation of Officer Waters with a "not sustained" finding. OPA's conclusion was reviewed  
 21 and approved by SPD's chief law enforcement officer, the Chief of Police.  
 22

23 3.22 As a proximate result of the City's violation of Sargent's civil rights through such  
 24 ratification, he suffered harm and damages in an amount to be determined at trial.  
 25

26 **E. Trespass to Chattel - Property Destruction**

27 3.23 Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.22.  
 28

1           3.24 Donald Waters, through his above-described actions, intentionally and recklessly  
2 interfered with Sargent's personal property without lawful justification when Waters pounded on  
3 the hood of Sargent's truck and broke the side view mirror.

4           3.25 Waters lacked any lawful justification for interfering with, and destroying,  
5 Sargent's property, and Waters did so while acting within the course and scope of his  
6 employment as a SPD officer at all relevant times.

7  
8           3.26 As a result of Waters' actions, and based upon the vicarious liability of the City of  
9 Seattle for Waters' actions as its employee, Sargent was deprived of use of his property and  
10 suffered harm and damages in an amount to be determined at trial.

11                           **F. Intentional Infliction of Emotional Distress**

12  
13           3.27 Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.26.

14           3.28 Defendant Waters, by the above-described actions and omissions, intentionally, or  
15 with reckless indifference to Sargent's well-being, inflicted severe emotional distress upon  
16 Sargent.

17           3.29 The actions and omissions of the defendant Waters as alleged above are so  
18 outrageous in character, and extreme in degree, as to go beyond all bounds of decency.  
19

20           3.30 The actions and omissions of defendant Waters caused Sargent to suffer  
21 emotional distress and to terminate his employment so as to avoid another similar confrontation  
22 with Waters or other like-minded SPD officers.

23           3.31 As a proximate result of the intentional infliction of emotional harm by Waters,  
24 and based upon the vicarious liability of the City of Seattle for Waters' actions as its employee,  
25 Sargent suffered harm and damages in an amount to be determined at trial.  
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**G. Malicious Prosecution**

3.32 Sargent re-alleges and incorporates the allegations in paragraphs 1.1 through 3.31.

3.33 Sargent has the right to be free from malicious prosecution.

3.34 Defendant Waters, and defendant City of Seattle based upon its vicarious liability for Waters' actions as its employee, committed the tort of malicious prosecution against Sargent by (a) causing institution of a criminal prosecution of Sargent that included a first appearance hearing while Sargent was unlawfully incarcerated, (b) without probable cause to support Sargent's arrest, detention or any criminal charge, (c) through malice, (d) for which two independent prosecuting attorneys refused to file any criminal charge, resulting in Sargent's release and the favorable termination of proceedings, and (e) for which Sargent suffered harm and damages in an amount to be determined at trial as a proximate result.

**IV. JURY DEMAND**

4.1 Sargent makes a jury demand consistent with Fed. R. Civ. P. 38.

**V. PRAYER FOR RELIEF**

Wherefore, plaintiff Sargent prays for the following relief and judgment against defendants:

5.1 Special and general damages in an amount to be proven at trial;

5.2 Punitive damages under 42 U.S.C. § 1983 against all defendants other than the City of Seattle;

5.3 Costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any applicable Washington authorities;

5.4 Prejudgment interest;

1           5.5    Such other and further relief to be proven at the time of trial and as the Court  
2 deems just and appropriate.

3           DATED July 18, 2012.

4  
5                                   **McKAY CHADWELL, PLLC**

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